or more of the exemptions of this sub-part and such supplemental interpretations or instructions issued by OPM.

(b) Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption.

(c) The burden of proof rests with the agency that asserts the exemption.

(d) An employee who clearly meets the criteria for exemption must be designated FLSA exempt. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee will be designated FLSA nonexempt.

(e) While established position descriptions and titles may assist in making initial FLSA exemption determinations, the designation of an employee as FLSA exempt or nonexempt must ultimately rest on the duties actually performed by the employee.

(f) Although separate criteria are provided for the exemption of executive, administrative, and professional employees, those categories are not mutually exclusive. Employees who perform a combination of exempt duties set forth in this regulation may also qualify for exemption. For example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption, i.e., work that is exempt under one section of this part will not defeat the exemption under any other section.

(g) Failure to meet the criteria for exemption under what might appear to be the most obvious criteria does not preclude exemption under another category. For example, an engineering technician who fails to meet the professional exemption criteria may be performing exempt administrative work, or an administrative officer who fails to meet the administrative criteria may be performing exempt executive work.

(h) Although it is normally feasible and more convenient to identify a single exemption category, this is not always appropriate. An exemption may be based on a combination of functions, no one of which constitutes the primary duty, or the employee's primary duty may involve two categories which are intermingled and difficult to seg-

regate. This does not preclude designating an employee FLSA exempt, provided the work as a whole clearly meets the other exemption criteria. The agency is responsible for showing and documenting that the work as a whole clearly meets one or more of the exemption criteria.

§ 551.203 Salary-based nonexemption.

(a) An employee, including a supervisory employee, whose annual rate of basic pay is less than $23,660 is nonexempt, unless:

(1) The employee is subject to § 551.211 (Effect of performing different work or duties for a temporary period of time on FLSA exemption status); or

(2) The employee is subject to § 551.212 (Foreign exemption criteria); or

(3) The employee is a professional engaged in the practice of law or medicine as prescribed in paragraphs (c) and (d) of § 551.208.

(b) For the purpose of this section, ''rate of basic pay'' means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable locality payment under 5 CFR part 531, subpart F, special rate supplement under 5 CFR part 530, subpart C, or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind, such as premium payments, differentials, and allowances.

§ 551.204 Nonexemption of certain employees.

(a) Certain nonsupervisory white-collar employees are FLSA nonexempt (unless the employees are subject to § 551.211 (Effect of performing different work or duties for a temporary period of time on FLSA exemption status) or § 551.212 (Foreign exemption criteria)) because they do not fit any of the exemption categories. They include:

(1) Employees in equipment operating and protective occupations, and most clerical occupations;

(2) Employees performing technician work in positions properly classified below GS–9 (or the equivalent level in other white-collar pay systems) and many, but not all, of those positions properly classified at GS–9 or above (or

the equivalent level in other white-collar pay systems); and

(3) Employees at any grade, or equivalent level, in occupations requiring highly specialized, technical skills and knowledge that can be acquired only through prolonged job training and experience, such as in the Air Traffic Control series, or in the Aircraft Operations series unless such employees are performing predominantly administrative functions rather than the technical work of the occupation.

(b) Nonsupervisory employees in the Federal Wage System or in other comparable wage systems are nonexempt, unless the employees are subject to § 551.211 (Effect of performing different work or duties for a temporary period of time on FLSA exemption status) or § 551.212 (Foreign exemption criteria).

§ 551.205 Executive exemption criteria.

(a) An *executive employee* is an employee whose primary duty is management (as defined in § 551.104) of a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and who:

(1) *Customarily and regularly directs* the work of two or more other employees. However, an employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement. In addition, hours worked by an employee cannot be credited more than once for different executives. This takes into consideration those organizations that use matrix management, i.e., a system of ''shared'' leadership, where supervision cuts across product and service lines in terms of accessing activities and advising top management on business operations, but where the supervisor/leader does not have the operating authority over all employees. Thus, a shared responsibility for the supervision of the same two employees in the same recognized organizational unit does not satisfy this requirement. However, a full-time employee who works 4 hours for one supervisor and 4 hours for a different supervisor will be credited as a half-time employee for both supervisors; and

(2) Has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees, are given particular weight.

(b) *Particular weight.* Criteria to determine whether an employee's suggestions and recommendations are given particular weight by higher-level management include, but are not limited to: whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. Particular weight does not include consideration of an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have particular weight even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

§ 551.206 Administrative exemption criteria.

An *administrative employee* is an employee whose primary duty is the performance of office or non-manual work directly related to the management or general business operations, as distinguished from production functions, of the employer or the employer's customers and whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(a) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term ''matters of significance'' refers to the level of importance or consequence of the work performed.